

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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In the Matter of)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARYReview of the Commission's
Rules and Policies Affecting the
Conversion to Digital Television)

MM Docket No. 00-39

To: The Commission

**INFORMAL COMMENTS ON
MSTV/NAB/ALTV PETITION FOR RECONSIDERATION**

Pegasus Communications Corporation ("Pegasus"),¹ by its attorneys, hereby submits the following Informal Comments in support of the Petition for Reconsideration filed by the Association for Maximum Service Television, Inc., the National Association of Broadcasters, and the Association of Local Television Stations, Inc., (collectively "MSTV/NAB/ALTV") in the above-referenced rule making proceeding.² By that Petition MSTV/NAB/ALTV seeks reconsideration of several aspects of the Commission's rules established regarding the conversion to digital television ("DTV"), including the lack of protection for "maximized"

¹ Pegasus owns and operates six full-power UHF television stations in small to mid-sized markets. Specifically, Pegasus' subsidiaries are the licensees of WOLF-TV, Hazelton, Pennsylvania, WILF(TV), Williamsport, Pennsylvania, WDSI-TV, Chattanooga, Tennessee, WDBD(TV), Jackson, Mississippi, WPXT(TV), Portland, Maine, and WTLH(TV), Bainbridge, Georgia.

² See Petition for Reconsideration, In the Matter of Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MM Docket No. 00-39, MSTV/NAB/ALTV, filed March 15, 2001.

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facilities. As described in greater detail in the Comments subsequently filed by Holston Valley Broadcasting Corporation (“Holston”), the Commission’s rules treat UHF and VHF broadcast television stations vastly different during the DTV transition.³ Specifically, Holston’s Comments and MSTV/NAB/ALTV’s Petition for Reconsideration address the inherent disparity in the Commission’s rules between the construction requirements for UHF NTSC television stations with DTV channel allocations in the UHF spectrum, and VHF NTSC television stations with DTV channel allocations in the UHF spectrum. While the construction deadlines facing analog television broadcasters currently operating in the UHF and VHF spectrum are ostensibly the same, in fact VHF stations are afforded much greater protection and flexibility in transitioning to DTV operations than are UHF stations.

DISCUSSION

Currently, all commercial television stations must build out and commence operation of their DTV facilities by the May 1, 2002 deadline.⁴ Throughout the creation and implementation of digital television, however, it has been anticipated that broadcasters will begin digital operations with relatively small facilities and increase the station’s power and service area later in the transition. Indeed, in its Report and Order issued in above-referenced rule making proceeding, the Commission gave television licensees until December 31, 2004 in order to replicate the service area of their existing NTSC station.⁵ Such flexibility will enable stations to

³ Comments on the MSTV/NAB/ALTV Petition for Reconsideration, MM Docket No. 00-39, Holston Valley Broadcasting Corporation, filed April 4, 2001.

⁴ 47 C.F.R. 73624(d).

⁵ In the Matter of Review of the Commission’s Rule and Policies Affecting the Conversion to Digital Television, Report and Order and Further Notice of Proposed Rule Making, MM Docket No. 00-39, 2001 FCC LEXIS 408, released January 19, 2001, at ¶¶ 18-24.

launch DTV services early in the transition, thus speeding penetration and demand for DTV receivers and programming. Accordingly, many broadcasters had planned to construct a smaller, initial facility to comply with the May 1, 2002 deadline, and then as the transition progressed, and the number of viewers with television sets capable of receiving digital signals increased, modify the DTV facilities to increase the power, and hence coverage, of the DTV station.

The disparity between UHF NTSC licensees and VHF NTSC licensees arises from the fact that NTSC VHF stations transitioning to DTV operations on UHF channels (hereinafter “VHF licensees”) have very high effective radiated powers (“ERPs”) protected by the DTV Table of Allotments, as such facilities were awarded so as to replicate the current service area of these stations. In contrast, UHF NTSC licensees transitioning to UHF DTV channels (hereinafter “UHF licensees”) have substantially lower ERPs specified as their “replication” facilities. Replication facilities are protected by the Commission, regardless of what is actually constructed or subsequently authorized in a construction permit, through December 31, 2004.⁶ Although UHF stations have been permitted to seek “maximized” facilities in order to increase the allowable ERP above that set by the DTV Table, to provide a more competitive facility comparable to that of the former UHF stations, those facilities are not protected by the Commission’s Rules through 2004. Instead, UHF licensees must construct and operate those larger, maximized facilities by May 1, 2002 or they are lost. In contrast, VHF stations have high ERPs that are protected by the Table of Allotments through 2004, and hence VHF licensees have until the end of that period to begin operations with larger facilities.

While UHF stations can seek authorization for maximized facilities later in the transition, there is no guarantee that they will be able to expand their service area in the future. Without

protection for the higher ERP, other full-power or Class A low-power television stations in the market can modify their operations to encroach on the area to which a maximized DTV station would otherwise provide service. Thus, the only way that a UHF station can ensure that it will be able to take advantage of the higher, maximized, ERP is to actually build out the maximization facilities by May 1, 2002. In contrast, competing VHF stations are able to rely on the fact that they have high ERPs protected by the DTV Table, and thus can increase their facilities later in the transition without the threat of a third-party encroaching on their coverage area.

This drastically changes the DTV transition with regard to UHF stations and places them at a substantial disadvantage. UHF licensees must start DTV operations at full-power, and full-cost, while VHF licensees transitioning to UHF DTV channels can begin with a smaller, less-costly facility with the leisure to expand once the demand for DTV programming and receivers has increased. As UHF stations, as a rule, are financially less profitable than VHF stations, this disparate treatment places the greatest economic burden on those stations least able to afford it. If this policy is not changed, it may well grandfather many UHF stations into second-class status in the digital world.

The inability to build a small initial DTV facility and transition gradually to digital broadcasting will place UHF stations at a competitive disadvantage; a disadvantage not intended by the Commission. It is inequitable to essentially require that UHF stations commence operations by May 1, 2002 with maximized facilities, while at the same time permitting VHF stations the benefit of the flexibility to start small and increase the DTV facilities as the transition

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⁶ Id. at ¶¶ 21-23.

progresses. The Commission's disparate treatment of UHF and VHF stations deprives UHF stations of the flexibility needed, and anticipated, for a successful transition. Therefore, as urged by MSTV/NAB/ALTV and Holston, the Commission must modify the DTV Table of Allotments to reflect the maximized facilities that have been permitted for UHF licensees, and grant them the same protection and flexibility afforded to VHF licensees. Similarly, the Commission must extend the construction deadline for UHF licensees who have been granted construction permits for maximized facilities.

Further exacerbating the disparate treatment of UHF and VHF stations is the fact that many broadcasters have either recently obtained their DTV construction permits, or worse, have yet to receive construction permits and thus, have not even begun construction of their DTV facilities. For example, Pegasus only recently obtained DTV construction permits for two of its stations, and still has three other applications for DTV construction permits currently pending before the Commission. Given the crush of tower construction now underway across America to meet the transition deadline, it is unrealistic to expect licensees to be able to construct new towers, or order other new equipment and have it installed in time to commence operation of a maximized DTV station in less than a year. The Commission recently recognized that a three-year construction period is normal for most new stations or changes in existing stations,⁷ yet the permits granted for these DTV stations are all substantially shorter than the norm. This is so even though the costs and complexity of the digital transition are far greater than that entailed in connection with a routine construction permit. And as described above, if licensees are not

⁷ 1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes, Report and Order, 13 FCC Rcd 23056 at ¶ 83 (1998).

afforded the flexibility that VHF licensees enjoy to gradually transition to full DTV operations, UHF licensees will be left behind in the DTV transition.

CONCLUSION

For the reasons articulated above, the Commission must establish protection for the maximized facilities permitted for UHF licensees and grant an extension of all maximized construction permits to give licensees a realistic opportunity to successfully transition to digital television.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Rhea Lytle, a secretary in the law firm of Shaw Pittman, do hereby certify that true copies of the foregoing "***Informal Comments on MSTV/NAB/ALTV Petition for Reconsideration***" were sent via U.S. Mail this 21st day of June, 2001, to the following:

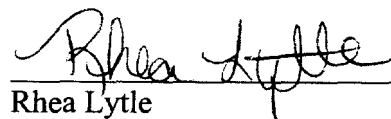
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